

Atty. Dkt. No. 026032-496

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:

Hartwich, Dirk

Title:

VEHICLE SEAT

Appl. No.:

10/552,405

International

4/7/2004

Filing Date:

371(c) Date:

10/7/2005

Patent No.:

7,467,823

Grant Date:

12/23/2008

Examiner:

White, Rodney Barnett

Art Unit:

3636

Confirmation

9309

Number:

## REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT **UNDER 37 C.F.R. §1.705**

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 12/23/2008 as U.S. Patent No. 7,467,823.

The Patent Office determined that the patent was entitled to 0 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or 154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the

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PTA statute is incorrect. Wyeth v. Dudas, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." Wyeth, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." Id.

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 23 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

There were no circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):

23 days

(b) Total Applicant delay:

0 days

Final PTA Determination:

23 days

Applicants therefore respectfully request that the patent be accorded 23 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

By All

Date February 20, 2009

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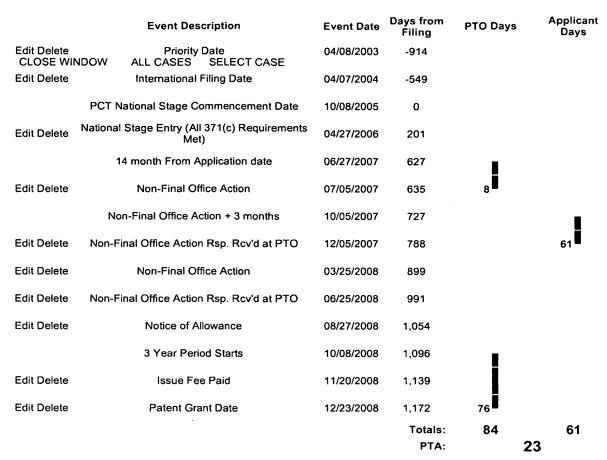
Facsimile: (202) 672-5399

Andrew E. Rawlins Attorney for Applicant Registration No. 34,702

## **Patent Term Adjustment Calculation System**

Add a new event to this case

Docket Number: 026032-4965 Application Number: 10/552405 Patent Number: N/A





Version: 3.02.05

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IP: 10.14.52.227

Foley & Lardner LLP